STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
Epic-NRG, LLC,	)	Case No. 2022-CP-26-07708
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER ENROLLING FOREIGN JUDGMENT**
	)	
Nicholas James Ragle, Chaps Development, LLC, and Ragle Sustainable Technology Sales Agency, LLC,	)	
	)	
Defendants.	)	

Plaintiff, by and through counsel, moved to enroll a foreign judgment from the State of North Carolina against Defendants Nicholas James Ragle, Chaps Development, LLC, and Ragle Sustainable Technology Sales Agency, LLC under the authority of the Uniform Enforcement of Foreign Judgments Act (S.C. Code Ann. 15-35-900, et seq.). Defendants, by and through counsel, filed a Motion for Relief contesting the enrollment on the basis that the Foreign Judgment should be declared void in the State of North Carolina due to lack of service.

These matters came before The Honorable William H. Seals, Jr. for a WebEx hearing on April 3, 2023. Paul H. Hoefer, Esquire of Robinson Gray Stepp & Laffitte, LLC, appeared on behalf of the Plaintiff, and Michael B. Dodd of The Dodd Law Firm appeared on behalf of the Defendants.

Based upon the matters of record, I find that Defendants' Motion for Relief is denied and that the Foreign Judgment should be fully enrolled and enforceable in South Carolina upon entry of this Order.

FACTS

I. North Carolina Lawsuit

Plaintiff filed the underlying North Carolina action against Defendants on April 28, 2022 in the Superior Court Division for Buncombe County, North Carolina in Case No. 22 CVS 1510 (the "North Carolina Lawsuit"). According to an Affidavit of a North Carolina attorney and a Return of Service filed in the North Carolina Lawsuit, Defendants were served by process server on April 29, 2022, and thereafter Defendants failed to timely respond to the Complaint. Plaintiff filed a Motion for Default on June 28, 2022, and the North Carolina Judgment was entered on August 5, 2022. The North Carolina Judgment is final as to Defendants and has not been paid in whole or in part. The total amount unpaid on the North Carolina Judgment is $183,500.00, plus interest accruing after judgment entry.

II. Instant South Carolina Foreign Judgment Enrollment Action

On December 1, 2022, Plaintiff initiated the instant action by filing a Petition for Filing Foreign Judgment in Horry County with a properly authenticated North Carolina Judgment and the requisite affidavit. On December 8, 2022, Defendants were served with the notice of the foreign judgment filing.

Thereafter, Defendants filed a Motion for Relief on January 6, 2023 relying upon S.C. Code Ann. 15-35-900, et seq., contending the foreign judgment is contested, should be voided in North Carolina, and therefore not enrolled in South Carolina. Subsequently, on April 3, 2023, the date of the hearing before this Court, an Affidavit of Nicholas James Ragle was filed by Defendants to support their Motion for Relief. In that Affidavit, Mr. Ragle contended that he, nor the corporate Defendants, were served with the Summons and Complaint in the North Carolina Lawsuit. Mr. Ragle contends the Affidavit of Service of Plaintiff's North Carolina counsel and the attached

Return of Service signed by a North Carolina process server do not properly establish service on the Defendants in the North Carolina Lawsuit.

LEGAL STANDARD

An action to enforce a foreign judgment is an action at law. *Pitts v. Fink*, 389 S.C. 156, 161, 698 S.E.2d 626, 629 (Ct. App. 2010). Under the Full Faith and Credit Clause, courts of one state must give such force and effect to a foreign judgment as the judgment would receive in the issuing state. U.S.C.A. Const. Art. 4, § 1. The law against which a foreign judgment is evaluated for viability and effect is the law of the state rendering the judgment. *Law Firm of Paul L. Erickson, P.A. v. Boykin*, 383 S.C. 497, 681 S.E.2d 575 (2009).

Under the Full Faith and Credit Clause, personal jurisdiction is presumed when a foreign judgment appears on its face to be a record of a court of general jurisdiction. U.S.C.A. Const. Art. 4, § 1. The burden of undermining the decree of a sister state rests heavily on the assailant who can overcome the presumption of jurisdiction and validity afforded the judgment by the Full Faith and Credit Clause only by extrinsic evidence, or by the record itself. *Law Firm of Paul L. Erickson, P.A. v. Boykin*, 383 S.C. 497, 681 S.E.2d 575 (2009). If the issue of personal jurisdiction has been litigated in and determined by the foreign court rendering judgment, the judgment is entitled to full faith and credit and cannot be collaterally attacked." *Ware v. Ware*, 404 S.C. 1, 12–13, 743 S.E.2d 817, 823 (2013).

CONCLUSIONS OF LAW

After considering the matters set forth in the record, I find that Plaintiff is entitled to enroll the North Carolina Judgment in South Carolina as a matter of law.

I. The sufficiency of service in the North Carolina Lawsuit was already decided by that Court and is not subject to collateral attack.

Here, Defendants contend the North Carolina Judgment should not be enrolled in South Carolina based on allegations that they were not served with the North Carolina Lawsuit and that the Affidavit and Return of Service filed in the underlying North Carolina Lawsuit should be set aside.

While South Carolina acknowledges lack of personal jurisdiction as a basis of defense to foreign judgment enrollment actions, that defense has applied in prior cases relating to long-arm jurisdiction under a minimum contacts analysis or enforcement of a forum selection clause. When a default judgment has been entered by the out-of-state court in those cases, the out-of-state state's Court has not been required to determine long-arm jurisdiction or enforcement of forum selection clauses. In those cases, public policy supports South Carolina considering a personal jurisdiction defense raised by the debtor for the first time in this state. Here, however, Defendants have not raised a long-arm or minimum contacts defense, and instead have only raised a procedural deficiency for alleged lack of service or failure of Plaintiff to properly establish service.

Even if Defendants' arguments here were supported, they are not proper defenses because the North Carolina Court already considered and ruled on the sufficiency of service. Specifically, in the North Carolina Lawsuit, an affidavit of Plaintiff's North Carolina attorney John R. Sutton, Jr. was filed on June 10, 2022 stating "Defendants were all served by a process server on the 29th day of April 2022" and attached a copy of the process server's Return of Service identifying the date, time, and parties served with the Summons and Complaint. Attorney Sutton also mailed a copy of Plaintiff's Motion for Default to Defendants on June 6, 2022, as reflected by a certificate of service. The North Carolina Court then granted an Order for Default Judgment based on the following findings:

- "Personal service was had on each of the Defendants on April 29, 2022."

- "The Defendants ... have failed to plead or appear in this matter in the time allowed by law."
- "That default was entered by the Clerk of Superior Court on June 10, 2022."
- "That Defendants have had proper notice of this hearing and failed to appear or otherwise respond to the allegations contained in Plaintiff's Complaint and Plaintiff's Affidavit."
- "That the Court finds the allegations contained in Plaintiff's Complaint and Plaintiff's Affidavit to be true."

Because the North Carolina Court acknowledged process service and provided for it in its final Order, this issue has been considered and decided and is not now subject to collateral attack in South Carolina.

II. Even if process service in the North Carolina Lawsuit is subject to collateral attack in South Carolina, Defendants' Motion still fails as a matter of law.

The record in the North Carolina Lawsuit contains sufficient evidence establishing service on the Defendants. Plaintiff's North Carolina attorney executed and filed an affidavit evidencing service including a Return of Service executed by a process server, which the Clerk accepted and filed, and which the North Carolina Court relied upon in entering judgment. Defendants have further failed to present sufficient evidence to set aside either the Affidavit of Service or the Return of Service relied upon in the North Carolina Lawsuit.

N.C. Gen. Stat. Ann. 1A-1, 4(j) provides that service may be accomplished by "delivering a copy of the summons and of the complaint to the natural person or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein" or by "[d]elivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute."

N.C. Gen. Stat. Ann. 1A-1, 4(g) provides that "[w]hen the summons is returned, the clerk shall note on the record the date of the return and the fact as to service or non-service."

In a 1949 decision, the Supreme Court of North Carolina ruled that the service of process and not the return of the officers confers jurisdiction, the return merely perfecting the record and furnishing proof of service for guidance of court. *State v. Moore*, 230 N.C. 648, 649–50, 55 S.E.2d 177, 178 (1949). The Court stated:

> It is the service of summons and not the return of the officer that confers jurisdiction. G.S. s 1-101. The return merely perfects the record and furnishes proof of service for the guidance of the court. G.S. s 1-102.
>
> An officer having process in hand for service must note on the process the date received by him, G.S. s 1-94, and make due return thereof. G.S. s 162-14. These are the affirmative requirements of the statutes.
>
> The officer's return is his answer touching what he is commanded to do by the writ. 'It is the 'bringing of a process into court with such indorsements as the law requires, whether they in fact be true or false.' (omitting internal citations).
>
> While it is the better practice for officers to make their returns with that degree of particularity necessary to show exactly upon whom and in what manner the process was served, failure to do so does not invalidate the service. 'Served' implies service as by law required. (omitting internal citations). So then the return 'served', or as here, 'served on Tar Heel Bonding Company. 7-1-45', signed by the officer in his official capacity is sufficient—at least prima facie—to show service. (omitting internal citation). The error in the date is immaterial.
>
> The court in its discretion may permit an officer to amend his return by adding further specifications as to the manner of service or the acts done in compliance with the statute, by including the names of the persons served and the capacity in which they were served, by adding or correcting the signature of the officer, or in any other manner deemed necessary to disclose full compliance with the law. (omitting internal citations). Therefore, even if the original return was deficient—and this we do not concede—the court below was acting within its authority in permitting the amendment.

State v. Moore, 230 N.C. 648, 649–50, 55 S.E.2d 177, 178 (1949).

In *Guthrie v. Ray*, 293 N.C. 67, 235 S.E.2d 146, (1977), the Supreme Court of North Carolina also addressed the sufficiency of service and found that a single contradictory affidavit is not sufficient to set aside a Return of Service:

> However, "(w)hen the return shows legal service by an authorized officer, nothing else appearing, the law presumes service. The service is deemed established unless, upon motion in the cause, the legal presumption is rebutted by evidence upon which a finding of nonservice is properly based. . . . Service of process, and the return thereof, are serious matters; and the return of a sworn authorized officer should not 'be lightly set aside.' . . . Therefore, this Court has consistently held that an officer's return or a judgment based thereon may not be set aside unless the evidence consists of more than a single contradictory affidavit (the contradictory testimony of one witness) and is clear and unequivocal." (omitting internal citation).
>
> The sheriff's return imports truth, and it "cannot be overthrown or shown to be false by the affidavit, merely, of the person upon whom the service is alleged to have been made. It has often been held that the return of a ministerial officer, as to what he has done out of court, is prima facie true, and cannot be contradicted by a single affidavit (or witness). . . . It would be oath against oath, and we could not well say with whom was the truth." (omitting internal citation).
>
> *Guthrie v. Ray*, 293 N.C. 67, 71, 235 S.E.2d 146, 149 (1977).

In a more recent case, the North Carolina Court of Appeals confirmed the *Guthrie v. Ray* Court's requirement of more than one affidavit, finding that the "[b]urden is on defendant to rebut presumption of valid service of process by clear and unequivocal evidence that consists of more than a single contradictory affidavit or the contradictory testimony of one witness. Rules Civ.Proc., Rule 4(j)(1)a, West's N.C.G.S.A. § 1A-1. *Gibby v. Lindsey*, 149 N.C. App. 470, 560 S.E.2d 589 (2002).

Here, Defendant has failed to rebut the presumption of valid service by clear and unequivocal evidence consisting of more than a single contradictory affidavit.

CONCLUSION

Defendants' Motion for Relief is denied. The sufficiency of process service in the underlying North Carolina Lawsuit is (1) not subject to collateral attack in South Carolina, and even if it was, (2) Defendants have failed to present sufficient evidence to defeat the presumption of valid service in North Carolina.

The North Carolina Judgment is entitled to Full Faith and Credit in South Carolina. Plaintiff is entitled to enrollment of the foreign judgment against Defendants, jointly and severally, in the amount of $183,500.00, plus interest accruing at the North Carolina post-judgment legal rate of interest since entry, plus interest accruing hereafter at the South Carolina post judgment legal rate of interest.

AND IT IS ORDERED.

[SIGNATURE PAGE TO FOLLOW]

Horry Common Pleas

Case Caption: Epic NRG LLC VS Nicholas James Ragle , defendant, et al

Case Number: 2022CP2607708

Type: Order/Other

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JUL 24 2023
SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable William H. Seals, Jr.

Circuit Court Case No. 2022-CP-26-07708

In RE: Epic-NRG, LLC..... Plaintiff,

v.

Nicholas James Ragle, Chaps Development, LLC, and

Ragle Sustainable Technology Sales Agency, LLC..... Defendants,

of which

Nicholas James Ragle, Chaps Development, LLC, and

Ragle Sustainable Technology Sales Agency, LLC are the ... Appellants,

and

Epic-NRG, LLC, is the..... Respondents.

NOTICE OF APPEAL

Nicholas James Ragle, Chaps Development, LLC, and Ragle Sustainable Technology Sales Agency, LLC appeal the orders of the William H. Seals, Jr. filed June 14, 2023, April 10, 2023 and informal decision of April 3, 2023. Appellants received written notice on June 14, 2023.

(signature page to follow)

THE DODD LAW FIRM, LLC

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July 14, 2023

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable William H. Seals, Jr.

Circuit Court Case No. 2022-CP-26-07708

In RE: Epic-NRG, LLC..... Plaintiff,

v.

Nicholas James Ragle, Chaps Development, LLC, and

Ragle Sustainable Technology Sales Agency, LLC..... Defendants,

of which

Nicholas James Ragle, Chaps Development, LLC, and

Ragle Sustainable Technology Sales Agency, LLC are the ... Appellants,

and

Epic-NRG, LLC, is the..... Respondents.

CERTIFICATE OF SERVICE

I, the undersigned attorney for the Appellants, Nicholas James Ragle, Chaps Development, LLC, and Ragle Sustainable Technology Sales Agency, LLC do hereby certify that I have served the below parties in this action with a copy of the Appellants' Notice of Appeal by mailing a copy of the same to the following addresses:

PARTIES SERVED:

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July 14, 2023

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RECEIVED
JUL 24 2023
SC Court of Appeals

The Honorable Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2607708

Epic NRG LLC
PLAINTIFF(S)

Nicholas James Ragle et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Defendant's Motion/Relief is respectfully denied.
Formal Order to follow by Attorney Hoefer to this effect.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/03/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Horry Common Pleas

Case Caption: Epic NRG LLC VS Nicholas James Ragle , defendant, et al

Case Number: 2022CP2607708

Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS
Epic-NRG, LLC, Plaintiff, v. Nicholas James Ragle, Chaps Development, LLC, and Ragle Sustainable Technology Sales Agency, LLC, Defendants.	)	Case No. 2022-CP-26-07708 **ORDER DENYING DEFENDANTS' MOTION FOR RECONSIDERATION**

This matter comes before the Court on Defendants' Motion for Reconsideration of the Court's Order entered April 10, 2023, which denied Defendants' Motion for Relief from enrollment of Foreign Judgment ("Motion for Relief").

Rule 59(e) of the South Rules of Civil Procedure permits a court to "alter or amend [a] judgment." Rule 59(e), SCRCP. "A motion under Rule 59(e) long has been viewed as 'motion for reconsideration' despite the absence of those words from the rule." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004).

After careful consideration of Defendants' Motion for Relief and after further deliberation, reviewing Plaintiff's Memorandum in Opposition, Rule 59(e) of the South Carolina Rules of Civil Procedure, and the Full Faith and Credit Clause, I respectfully **DENY** Defendants' Motion for Reconsideration, as set forth further below.

I. Basis for Defendants' Motion for Reconsideration

Defendants seek an amended Order pursuant to Rule 59(e), SCRCP, on the basis that after this Court's Order was entered, they filed a *pro se* Motion for Relief from Judgment in North Carolina on April 19, 2023 ("new *pro se* filing"). Defendants contend that, because of their new

pro se filing in North Carolina, the issues of personal jurisdiction and validity of the North Carolina judgment are now again pending in North Carolina, and therefore this Court should amend its Order and not give Full Faith and Credit to the judgment in South Carolina.

II. The Motion for Reconsideration is denied on the merits.

The Court's Order comports with applicable law and properly denies Defendants' Motion for Relief for the reasons set forth therein. Additionally, Defendants' instant arguments are based upon the new *pro se* filing nine days after the Court's Order. Because evidence of the new *pro se* filing was not raised before, it is not properly before this Court pursuant to Rule 59(e) motion. *See Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (finding a party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not); *see also, Kiawah Property Owners Group v. Public Service Com'n. of S.C.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (finding that a party may not raise an issue in a motion to reconsider, alter, or amend a judgment that could have been presented prior to the judgment).

Regardless, Defendants' new *pro se* filing does not entitle Defendants to Relief from Entry of Foreign Judgment. Instead, the new *pro se* filing is only an attempt by Defendants to unwind a final judgment in North Carolina. There is no evidence the North Carolina Court has acted on the new *pro se* filing and no evidence the North Carolina judgment is on appeal. The only evidence before this Court reflects the judgment being valid and enforceable in North Carolina and therefore entitled to Full Faith and Credit in South Carolina.

III. Defendants failed to comply with the requirements of Rule 59(g).

Rule 59(g), SCRCP, provides "[a] party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion." The rule was addressed by the South Carolina Court of Appeals in a 2017 decision:

> The trial court properly denied Smith's motion for reconsideration because he failed to provide the motion to the trial judge within ten days of filing. Rule 59(g) would lack any purpose if trial courts committed error by denying the motion for failure to comply with the rule. Further, our language in *Gallagher v. Evert*, 353 S.C. 59, 63-64, 577 S.E.2d 217, 219 (Ct. App. 2002) implies a trial court may deny the motion solely on the basis of the rule. *See* 353 S.C. at 63, 577 S.E.2d at 219 ("Because the [trial] court found it appropriate to hear the matter, we find no error in the [trial] court's decision to decide the motion *despite* [the appellant's] failure to comply with Rule 59(g), SCRCP." (emphasis added)). Accordingly, the trial court properly denied Smith's motion for reconsideration because he did not timely provide a copy of the motion to the judge.
>
> *Smith v. Fedor*, 422 S.C. 118, 126, 809 S.E.2d 612, 616 (Ct. App. 2017)

Here, Defendants' Motion for Reconsideration was filed on April 19, 2023, but Defendants did not provide a copy of the motion to the Presiding Judge until May 18, 2023. Therefore, this Court further denies the Motion for Reconsideration on the basis that Defendants failed to comply with the procedural requirements of Rule 59(g), SCRCP.

IV. Conclusion

Defendants' Motion for Reconsideration is denied on the merits. The North Carolina Judgment is valid and enforceable, not on appeal, and is entitled to Full Faith and Credit in South Carolina. Pursuant to applicable South Carolina law, Defendants' "new *pro se* filing" in North Carolina submitted after this Court's Order cannot form a proper basis for a Rule 59(e) amended judgment in South Carolina. Additionally, Defendants' Motion for Reconsideration is denied because Defendants failed to comply with the procedural requirements of Rule 59(g), SCRCP.

Therefore, the Order entered on April 10, 2023 stands, and Defendants' Motion for Reconsideration is hereby DENIED.

AND IT IS SO ORDERED.

The Honorable William H. Seals, Jr.

Horry Common Pleas

Case Caption: Epic NRG LLC VS Nicholas James Ragle , defendant, et al

Case Number: 2022CP2607708

Type: Order/Other

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157